90-928①

No. ____________

Supreme Court, U.S.
FILED
DEC 10 1990
JOSEPH F. SPANIOL, J
CLERK

IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1990

Marvin Steil

Marvin Steil, Petitioner,

v.

Joseph Lieberman,
Laura Cahill, Respondents.

Petition For Writ of Certiorari to the
United States Court of Appeals
For the Second Circuit

PETITION FOR WRIT OF CERTIORARI

Marvin Steil
Petitioner Pro Se
P.O. Box 1862
Middletown, CT 06457

QUESTIONS PRESENTED FOR REVIEW

1. Do the principles of Minnesota Board v.Knight, 466 U.S.271 (1984) extend to and provide protection for liability of congressional staff employees?

2. Should the court reconsider the principles of Minnesota Board v. Knight, 466 U.S. 271 (1984) as they apply to members of Congress and congressional staff employees?

3. Do congressional staff members enjoy a "privilege" as public employees to commit common law torts without legal liability for their actions?

4. May congressional staff members individually deprive citizens of their right to "meaningful and effective" access to their elected representatives?

5. Should the Court of Appeals have remanded this action to the district court for clarification and explanation by the

district court of the grounds for its decision?

TABLE OF CONTENTS

TABLE OF CONTENTS

TABLE OF AUTHORITIES

No. __________

IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1990

Marvin Steil, Petitioner,

v.

Joseph Lieberman,
Laura Cahill, Respondents.

Petition For Writ of Certiorari to the
United States Court of Appeals
For the Second Circuit

To the Honorable, The Chief Justice and
Associate Justices of the Supreme Court
of the United States:

Marvin Steil, the petitioner herein, respectfully prays that a writ of certiorari issue to review the order of the United States Court of Appeals for the Second Circuit entered in this case on September 12, 1990.

No. ____________

IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1990

Marvin Stall, Petitioner,

v.

Joseph Lieberman,
Laura Cahill, Respondents.

Petition For Writ of Certiorari to the
United States Court of Appeals
For the Second Circuit

To the Honorable, The Chief Justice and
Associate Justices of the Supreme Court
of the United States:

Marvin Stall, the petitioner herein, respectfully prays that a writ of certiorari issue to review the order of the United States Court of Appeals for the Second Circuit entered in this case on December 12, 1990.

OPINIONS BELOW

The decision of the Court of Appeals, dated September 12, 1990 is reproduced in the Appendix attached to this petition at pp. A1 - A6. The decision is an unpublished order. The District Court did not enter an opinion and merely wrote in handwriting "granted as to motion to dismiss" in the margin of one of the defendants' pleadings.

JURISDICTION

The order of the Court of Appeals was entered in September 12, 1990.

The jurisdiction of this court is invoked pursuant to 28 U.S.C. §1254.

CONSTITUTIONAL PROVISIONS INVOLVED

This action arises under the First Amendment to the Constitution of the United

OPINIONS BELOW

The decision of the Court of Appeals, dated September 12, 1980 is reproduced in the Appendix attached to this petition at pp. A1 - A6. The decision is an unpublished order. The District Court did not enter an opinion and merely wrote in handwriting "granted as to motion to dismiss" in the margin of one of the defendants' pleadings.

JURISDICTION

The order of the Court of Appeals was entered on September 12, 1980.

The jurisdiction of this Court is invoked pursuant to 28 U.S.C. §1254.

CONSTITUTIONAL PROVISIONS INVOLVED

This action arises under the First Amendment to the Constitution of the United

States which provides in relevant part that "Congress shall make no law...prohibiting...[the right to] petition the Government for a redress of grievances."

STATEMENT OF THE CASE

The jurisdiction of the United States District Court for the District of Connecticut was originally invoked pursuant to 28 U.S.C. §1331 ("federal question jurisdiction") based on the First Amendment issues articulated by petitioner.

Petitioner Marvin Steil ("Steil") sought to petition his United States Senator Joseph Lieberman, by contacting his Hartford, Connecticut office. On April 17, 1989 he phoned the office and was told by Respondent Laura Cahill ("Cahill") that she was worried about her "safety" and the

States which provides in relevant part that "Congress shall make no law...prohibiting... [the right to] petition the Government for a redress of grievances."

STATEMENT OF THE CASE

The jurisdiction of the United States District Court for the District of Connecticut was originally invoked pursuant to 28 U.S.C. §1331 ("federal question jurisdiction") based on the First Amendment issues articulated by petitioner.

Petitioner Marvin Stell ("Stell") sought to petition his United States Senator Joseph Lieberman, by contacting his Hartford, Connecticut office. On April 17, 1993 he phoned the office and was told by respondent Laura Cahill ("Cahill") that she was worried about her "safety" and the safety of "caseworkers" and that Steil should cease to call Senator Lieberman's office. When Steil later phoned the office, another employee who answered the phone hung up on Steil.

Steil brought an action in the district court alleging four claims: (1) denial of his First Amendment right to petition his elected representatives and denial of Equal Protection to Steil as a Connecticut constituent; (2) negligent or intentional infliction of emotional distress; (3) misrepresentation; (4) defamation per se.

After holding a hearing, the district court entered a handwritten order dismissing the action, and thereafter the Clerk of the District Court entered a boilerplate safety of "caseworkers" and that Stall should cease to call Senator Lieberman's office. When Stall later phoned the office, another employee who answered the phone hung up on Stall.

Stall brought an action in the district court alleging four claims: (1) denial of his First Amendment right to petition his elected representatives and denial of equal protection to Stall as a Connecticut constituent; (2) negligent or intentional infliction of emotional distress; (3) misrepresentation; (4) defamation per se.

After holding a hearing, the district court entered a handwritten order dismissing the action, and thereafter the Clerk of the District Court entered a boilerplate judgment dismissing the action. The Court of Appeals affirmed, finding the case frivolous and holding that Steil had failed to state any claim on which relief could be granted.

The Court of Appeals dismissed Steil's First Amendment arguments based on Minnesota Board v. Knight, 466 U.S. 271 (1984). The court also held that Steil had failed to state a common law cause of action but that if he had, "Cahill's alleged statements were privileged because they arose out of the discharge of her official duties as a member of Lieberman's staff."

Steil brings this petition to review and reverse the decision of the Court of Appeals.

judgment dismissing the action. The Court of Appeals affirmed, finding the case frivolous and holding that Stell had failed to state any claim on which relief could be granted.

The Court of Appeals dismissed Stell's First Amendment arguments based on *Minnesota Board v. Knight*, 465 U.S. 271 (1984). The court also held that Stell had failed to state a common law cause of action but that if he had, "Cahill's alleged statements were privileged because they arose out of the discharge of her official duties as a member of Lieberman's staff."

Stell brings this petition to review and reverse the decision of the Court of Appeals.

REASONS FOR ALLOWANCE OF THE WRIT

General Reasons

This court should grant the petition because the Second Circuit has entered a decision which conflicts with a decision of the United States Court of Appeals in Chastain v. Sundquist,, 833 F.2d 311 (D.C. Cir. 1987). The decision in this case also conflicts with and is inconsistent with this court's decisions in Hutchinson v. Prioxmire, 443 U.S.111 (1979), Gravel v. U.S., 404 U.S. 606 (1972) and Doe v. McMillan, 412 U.S. 306 (1973).

SPECIFIC REASONS

I.

THE PRINCIPLES OF MINNESOTA BOARD V. KNIGHT DO NOT EXTEND TO CREATE IMMUNITY FOR UNLAWFUL ACTIONS BY CONGRESSIONAL STAFF EMPLOYEES

The Court of Appeals misread Minnesota Board as an immunity decision and improperly conflated the general principles of Minnesota with the immunity decisions of this court. In the current action, a congressional staff member acted in an irrational and abusive manner. Without any basis in fact, or rational basis for her "fears," she sought to deprive a constituent of access to his elected representative. The record is devoid of any substance for the

irrational "fears" of respondent Cahill that she or anyone else was in any form of danger. The Court of Appeals misapplied Minnesota to create a virtual immunity for unlawful and irrational acts of congressional staff employees, and to immunize such abusive conduct under the rubric of Minnesota which stated that an election challenge is the primary method of ventilating disputes with an elected official. Minnesota does contain expansive language, but it was obviously not intended to immunize irrational and abusive conduct by a congressional staff employee. The decision of the Court of Appeals is in stark conflict with the analogous situation decided in Chastain v. Sundquist, 833 F.2d

311 (D.C. Cir. 1987) in which the Court of Appeals for the District of Columbia Circuit allowed claims to proceed against a Member of Congress and correctly applied this court's prior reasoning in Proxmire, Gravel, and Doe. The present action names an elected official as a necessary party, to comply with Federal Rules of Civil Procedure on joinder. But it is obvious from the record and clear from the pleadings that the elected representative is primarily a nominal party, and that Steil's principal conflict is with a staff member of Senator Lieberman's, respondent Cahill. Minnesota was never intended to protect staff employees for their own abusive conduct, especially where the record is equally devoid of any ratification by Senator

211 (D.C. Cir. 1987) in which the Court of Appeals for the District of Columbia Circuit allowed claims to proceed against a member of Congress and correctly applied this court's prior reasoning in *Eastland*, *Gravel*, and *Doe*. The present action names an elected official as a necessary party, to comply with Federal Rules of Civil Procedure on joinder. But it is obvious from the record and clear from the pleadings that the elected representative is primarily a nominal party, and that staff's principal conflict is with a staff member of [illegible] [illegible], respondent [illegible], Minnesota was never intended to protect staff employees for their own abusive conduct, especially where the record is devoid of any ratification of [illegible]

Lieberman of Cahill's actions and the record is silent on whether Lieberman even knows how Steil has been victimized.

II.

THE COURT SHOULD RECONSIDER THE EXPANSIVE LANGUAGE OF MINNESOTA BOARD IN LIGHT OF THE POLITICAL REALITIES OF MODERN DAY ELECTORAL POLITICS

Even if this court were to adhere to the expansive language contained in Minnesota, the court should reconsider whether such language comports with the reality of modern-day electoral politics.

The court suggested in Minnesota that the primary means of raising differences with an elected representative is to campaign against him. This is simply not a

Lieberman of Cahill's motions and the record is silent on whether Lieberman even knows how Scott has been victimized.

III.

THE COURT SHOULD RECONSIDER THE EXPANSIVE LANGUAGE OF MINNESOTA BOARD IN LIGHT OF THE POLITICAL REALITIES OF MODERN DAY ELECTORAL POLITICS

Even if this Court were to adhere to the expansive language contained in Minnesota, the Court should reconsider whether such language comports with the reality of modern-day electoral politics.

The Court suggested in Minnesota that the primary means of raising differences with an elected representative is to campaign against him. This is simply not a realistic option in our system of congressional government.

Steil is a quintessential common man, a retired federal employee with no significant assets, no political power, no media access and no means of mounting a challenge to a public official. Where rights conflict between officials and citizens, the courts are created as a means of vindicating disputes short of resort to electoral campaigns, and have always been considered the primary means of resolving disputes which do not a desire by a citizen to run for office but merely to seek justice and fairness from a public official.

realistic option in our system of congressional government.

Scott is a quintessential common man: a retired federal employee with no significant wealth, no political power, no media access and no means of mounting a challenge to a public official. Where rights conflict between officials and citizens, the courts are created as a means of vindicating disputes short of resort to electoral campaigns, and have always been considered the primary means of resolving disputes which do not a desire by a citizen to run for office but merely to seek justice and fairness from a public official.

Incumbent legislators have massive, publicly-funded powers of incumbency. The common citizen does not enjoy "equal protection of the laws" on a level playing field with powerful campaign contributors, PAC donors and vested interests. In a recent U.S. Senate Ethics Committee hearing on the so-called " Keating Five," Senator Alan Cranston candidly admitted as much and said it was simply unrealistic to believe that campaign contributors were on an even plane with the common citizen. If this court were to reduce the "right to petition" to a right to campaign for office or support those who do, and strip the right of any meaningful access to the judicial system as an intermediate, accessible and attainable

Incumbent legislators have massive, publicly-funded powers of incumbency. The common citizen does not enjoy "equal protection of the laws" on a level playing field with powerful campaign contributors, PAC donors and vested interests. In a recent U.S. Senate Ethics Committee hearing on the so-called "Keating Five," Senator Alan Cranston candidly admitted as much and said it was surely unrealistic to believe that campaign contributors were on an even plane with the common citizen. If this court were to reduce the "right to petition" to a right to complain to offices or support those who do, and strip the right of any meaningful access to the judicial system as an intermediate, accessible and alternative means of vindicating disputed claims, then the Right To Petition would be rendered essentially meaningless.

Steil, moreover, has no interest in replacing Senator Lieberman, or supporting a challenge to the Senator. He is merely trying to get around an abusive and irrational staff member who hallucinates that she is in "danger" of imaginary threats posed by Steil, when Steil poses no threat to anyone and merely seeks to communicate with his elected representative in a

reasonable manner.[1] Given the totality of the facts, and the fact that the expansive language of Minnesota lends itself to misapplication, Steil asks this court to revisit the issue of the Right to Petition, and to hold that Minnesota was never intended to deny constituents Equal

---

[1] It should be emphasized that this is not a case where Steil seeks access or is suing for personal access to the Senator. Steil has never asked to see the Senator personally. He is merely seeking access to the legislative services provided by the Senator's office and made available on a general basis to constituents in Connecticut. Thus, this case does not represent a case where someone, such as the petitioner in Minnesota, is insisting on "direct access" to a public official. It is clear from the decision of the Court of Appeals, moreover, that Cahill sought to ban Steil from contacts with the office, since Steil was only seeking access to congressional services and did not ask to see his elected representative in person.

reasonable manner.'[7] Given the locality of the facts, and the fact that the evocative language of Minnesota lends itself to misapplication, Strell asks this Court to re-visit the issue of the right to recusation, and to hold that Minnesota was never intended to make constitutional [illegible]

---

[7] It should be emphasized that this is not a case where Strell merely objects to the [illegible]

Protection of the Laws and never meant to bar judicial review of disputes between a congressional employee and a constituent. It is simply unrealistic to expect that e every time a constituent disagrees with an abusive staff member, the constituent's only remedy is to mount or support an electoral challenge to a public official.

III.

CONGRESSIONAL STAFF MEMBERS DO NOT ENJOY IMMUNITY FOR THEIR COMMON LAW TORTS

The Court of Appeals afforded Cahill virtual immunity for her common law torts, finding that Cahill's "alleged statements were privileged because they arose out of the discharge of her official duties as a member of Lieberman's staff." (App. p. A 5) The Court of Appeals' decision is in stark conflict with <u>Chastain, supra</u> and this

court's decisions in Hutchinson, Gravel and Doe, supra.

In Count Two, Steil alleged that he had suffered emotional distress because of Cahill's abusive conduct and statements. The Court of Appeals dismissed Steils' claims, finding that Cahill's conduct "was not extreme and outrageous conduct either intended or reasonably likely to cause emotional distress." (Appendix p. A 4). Questions of reasonableness are, of course, grist for a jury's determination, not a judge's. But is it so unreasonable that a common citizen who is told out of the blue he is "dangerous" and is "banned" from phone contact with his elected representative's office by an abusive employee would suffer distress, embarrassment, humiliation and injury of the type redressable by a jury?

court's decisions in *Hutchinson*, *Brawley* and *Dun, supra*.

In Count Two, Ebert alleges that he had suffered emotional distress because of Cahill's abusive conduct and statements. The Court of Appeals dismissed this claim, finding that Cahill's conduct "was not extreme and outrageous conduct either intended or reasonably likely to cause emotional distress." (Appendix p. A 4). Questions of reasonableness are, of course, grist for a jury's determination, not a judge's. But is it so unreasonable that a common citizen who is told out of the blue he is "dangerous" and is "banned" from doing contract with his elected representative's office by an abusive employee would suffer distress, embarrassment, humiliation and injury of the type recognized by a jury?

Steil submits that he stated a claim which was sufficient to go to a jury, given the admitted outrageous statements of Cahill.

Similarly, the Court of Appeals immunized statements concerning Steil's "dangerousness" which were facially defamatory. More interestingly, while Cahill supplied an affidavit in the district court, no other staff member supplied any statement supporting Cahill or adding weight to her hallucinatory accusations. Yet the Court of Appeals immunized Cahill's abusive statements from any liability in court, remanding Steil to an election campaign as his sole redress for being abused by an irrational and power-drunk staff employee. Given the clear conflict between the Hutchinson, Gravel and Doe decisions of this court and the Chastain decision of the

District of Columbia Circuit, it is appropriate for this court to reconsider the scope of congressional staff immunity for outrageous and abusive conduct in the context of judicial remedies.

IV.

STAFF MEMBERS MAY NOT DENY CONSTITUENTS ACCESS TO THEIR ELECTED REPRESENTATIVES

Closely associated with the previous point is the fact that the record is devoid of any indication Senator Lieberman ever knew what Cahill was doing or ever approved of her conduct. He offered no affidavit in the district court, and the only statement that was submitted came from Cahill herself. One of the evils of our government today is that staff members of Senators and House Members have become a power unto themselves

District of Columbia Circuit, it is appropriate for this court to reconsider the scope of congressional staff immunity for outrageous and abusive conduct in the context of judicial remedies.

IV.

STAFF MEMBERS MAY NOT DENY CONSTITUENTS ACCESS TO THEIR ELECTED REPRESENTATIVES

Closely associated with the previous point is the fact that the record is devoid of any indication Senator Lieberman even knew what [illegible] was doing or ever approved of her conduct. He offered no affidavit in the district court, and the only statement that was submitted came from [illegible], herself. One of the evils of our government today is that staff members of Senators and House Members have become a power unto themselves.

and, if the Court of Appeals decision is allowed to stand, a law unto themselves as well, who enjoy coequal immunity with Members of Congress for the employees' outrageous and abusive actions having no connection with official duties. It is simply beyond the pale to argue that asserting hallucinatory claims and making unfounded accusations against a constituent, which find no support in the record, are part of the official duties of a congressional staff employee. Hutchinson, Gravel and Doe, and Chastain, are to the explicit contrary.

V.

THE COURT OF APPEALS SHOULD HAVE REMANDED THIS CASE FOR EXPLANATION AND EXPLICATION BY THE DISTRICT COURT

One of the problems confronting Steil

and, if the Court of Appeals decision is allowed to stand, a few aides themselves as well, who enjoy coequal immunity with Members of Congress for the employees' outrageous and abusive actions having no *connection with official duties*. It is simply beyond the pale to argue that asserting hallucinatory claims and making unfounded accusations against a constituent, which find no support in the record, are part of the official duties of a Congressional staff employee. Nothing in *Gravel and Doe*, and *Chastain*, are to the contrary.

THE COURT OF APPEALS SHOULD HAVE REMANDED THE CASE FOR EXPLANATION AND EVALUATION BY THE DISTRICT COURT

One of the principal questions concerning staff as he appealed the district court decision is that there was no district court decision. While the Court of Appeals wrote a brief decision, that decision could not have been in review of the district court's action, because the district court dismissed the case but never made any findings of fact or explained its conclusions of law. The district judge simply wrote several words along the margin of a defendant's pleading, and the Clerk simply entered a boilerplate judgement referring to the "full record of the case" and "applicable principles of law." What record? What principles? The record is devoid of any reasoned statement by the district judge. Given that the Court of Appeals grappled with what constitutes "reasonable" conduct (Count Two), which is as he suggested the district court opinion is that there was no district court decision. While the Court of Appeals wrote a brief decision, that decision could not have been in review of the district court's actions, because the district court dismissed the case and never made any findings of fact or explained its conclusions of law. The district judge simply wrote several words along the margin of a defendant's pleading, and the clerk simply entered a one-line judgment referring to the [illegible] [illegible] "the case" and [illegible] [illegible] [illegible] [illegible] a traditional jury issue, it is clear that the Court of Appeals reviewed its own views of what the district court had done, not a decision by the district court explaining why Steil was to be denied his day in court before a jury of his peers who would assess the reasonableness of Cahill's conduct and put to rest, once and for all, her hallucinatory and unfounded claims. This court can equally ask the Court of Appeals to send this matter back to the district court for an explanation of the reasons for the district judge's actions, and the basis for his decision to deprive plaintiff/Steil of a jury determination of the disputed facts in this controversy.

CONCLUSION

Petitioner asks that this court grant the writ sought, and reverse the Court of Appeals and enter a decision consistent with the teachings of Hutchinson, Gravel and Doe as applied in Chastain.

Respectfully submitted,

Marvin Steil

MARVIN STEIL
P.O. Box 1862
Middletown, CT 06457

APPENDIX

United States Court of Appeals
For the Second Circuit

Present:

Hon. J. Edward Lumbard,
Hon. Ralph K. Winter,
Hon. Roger J. Miner,
Circuit Judges

Marvin Steil,
Plaintiff-Appellant,

v.

Joseph Lieberman,
Laura Cahill,
Defendants-Appellees.

ORDER
90-6137

Filed: September 12, 1990

Marvin Steil appeals from Judge Nevas' summary dismissal of Steil's pro se complaint. Because Steil's complaint is frivolous, we affirm.

Steil's complaint alleged that on April 17, 1989, he telephoned United States Senator Joseph Lieberman's Hartford, Connecticut office and spoke

with Laura Cahill, the director of constituent services. Cahill allegedly told Steil that she was "worried about the safety of caseworkers" and that Steil was "not to call this office again." Cahill then hung up on Steil. Steil also alleged that he later wrote to Lieberman about the incident and that Lieberman did not respond. On May 30, 1989, Steil again called Lieberman's Office. The staff worker who answered the phone told Steil not to call again and hung up on him.

As a result of these incidents, Steil filed suit against Liebermann and Chill. Each of the four counts in Steil's complaint failed to state a claim upon which relief can be granted. First, Steil claimed that Liebermann and Cahill

deprived him of his constitutional right to petition his elected representatives. However, the public does not have an unrestricted right of access to government officials. Minnesota Bd. v. Knight, 465 U.S.271, 283-285 (1984). The constitutional right to petition government does not oblige individual public officials to listen to a particular grievance. In point of fact, "disapproval of public officials' responsiveness...is to be registered at the polls." Id. at 285. Accordingly, Steil has not been deprived of any constitutional right.

Similarly, Steil's state tort law counts failed to state a cause of action under Connecticut law. In the second count of his complaint, Steil alleged the intentional or negligent infliction of

emotional distress. However, the conduct alleged in the complaint was not extreme and outrageous conduct either intended or reasonably likely to cause emotional distress. See e.g. Maori v. Bridgeport Hospital, 40 Conn. Supp. 56, 480 A.2d 610, 614 (1984). Accordingly, this court was properly dismissed.

Steil also failed to allege facts sufficient to support a claim of fraudulent representation by Liebermann's employees. He did not allege that the employees knew that their statements were false, that they made the statements to induce Steil to act to his detriment, or that he acted to his detriment as a result. See e.g. Miller v. Appleby, 183 Conn.51, 438 A.2d 811, 813 (1981).

Finally, Steil claimed that Chill defamed him. However, his claim more closely resembles an allegation of slander since defamation requires the publication of a false statement. See e.g. Strada v. Connecticut Newspapers, 193 Conn. 313 (1984). Even construed as a slander claim, Steil failed to state a cause of action. Chill's alleged statements were privileged because they arose out of the discharge of her official duties as a member of Liebermann's staff. Moreover, there is no allegation that an improper motive led Chill to make these statements. See Miles v. Perry, 11 Conn. App. 584, 595-600, 529 A.2d 199, 206-8 (1987).

Affirmed.

/S/ Hon. J. Edward Lumbard

/S/ Hon. Ralph K. Winter

/S/ Hon. Roger J. Miner